

United States Patent Application

COMBINED DECLARATION AND POWER OF ATTORNEY

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As below named inventors, We declare that:

Our residence, post office addresses and citizenships are as stated below next to our names.

We believe that we are the original, first and joint inventors of the subject matter which is claimed and for which a patent is sought on the invention entitled: MONITORING UPSTREAM FREQUENCY BAND the specification of which is identified below.

The specification filed on August 22, 2001 and assigned U.S. Serial No. 09/935,193

We have reviewed and understand the contents of the above-identified specification, including the claims.

We acknowledge the duty to disclose information which is material to patentability as defined in 37 C.F.R. § 1.56 (see attached page4).

We claim foreign priority benefits under 35 U.S.C. § 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached

We claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below.

Application Number(s)	Filing Date (MM/DD/YYYY)

We claim the benefit under 35 U.S.C. § 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of 35 U.S.C. § 112, we acknowledge the duty to disclose material information as defined in Title 37 C.F.R. § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. or PCT Application Number	Filing Date (MM/DD/YYYY)	Patent No.

As named inventors, we appoint the following registered practitioners to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith, with full right of substitution:

Name	Registration Number	Name	Registration Number
Fogg, David N.	Reg. No. 35,138	Polglaze, Daniel J.	Reg. No. 39,801
Kelly, Mark D.	Reg. No. 39,467	Laura A. Ryan	Reg. No. 49,055
Leffert, Thomas W.	Reg. No. 40,697	Slifer, Russell D.	Reg. No. 39,838
Lundberg, Scott V.	Reg. No. 41,958	Walseth, Andrew C.	Reg. No. 43,234
Myrum, Tod A.	Reg. No. 42,922		

Please direct all correspondence in this case to:

Fogg, Slifer & Polglaze, P.A.
P.O. Box 581009, Minneapolis, MN 55458-1009
Telephone No. (612) 312-2200
Fax (612) 312-2250

Attorney Docket No. 100.226US01

U.S. Serial No. 09/935,193

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U.S. PATENT AND TRADEMARK OFFICE

We declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true. We further declare that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Inventor No. 1

Given Name (First and Middle (if any))				Family Name or Surname					
WILLEM				ENGELSE					
Inventor's Signature		W.H.H. Engelse				Date		1/22/02	
Residence: City		State		Country		Citizenship		NL	
Post Office Address		Maasboulevard 68, 3114 HC Schiedam							
City		State		Zip		Country		Netherlands	

Inventor No. 2

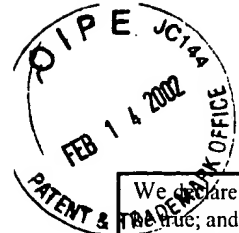
Given Name (First and Middle (if any))				Family Name or Surname					
WILLIAM				CORLEY					
Inventor's Signature						Date			
Residence: City		State		Country		Citizenship		US	
Post Office Address		12 Milton Lane							
City		State		Zip		Country		USA	

Inventor No. 3

Given Name (First and Middle (if any))				Family Name or Surname					
DAVID				UNGER					
Inventor's Signature						Date			
Residence: City		State		Country		Citizenship		US	
Post Office Address		9 Farrwood Road							
City		State		Zip		Country		USA	

Inventor No. 4

Given Name (First and Middle (if any))				Family Name or Surname					
DAVID				DAVIES					
Inventor's Signature						Date			
Residence: City		State		Country		Citizenship		US	
Post Office Address		35 Ruthehen Road							
City		State		Zip		Country		USA	



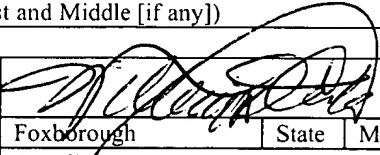
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We declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

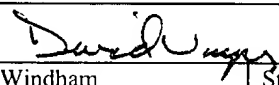
Inventor No. 1

Given Name (First and Middle [if any])				Family Name or Surname			
WILLEM				ENGELSE			
Inventor's Signature						Date	
Residence: City		State		Country	Netherlands	Citizenship	NL
Post Office Address	Maasboulevard 68, 3114 HC Schiedam						
City		State		Zip		Country	Netherlands

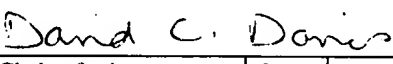
Inventor No. 2

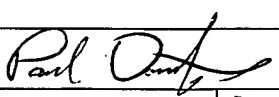
Given Name (First and Middle [if any])				Family Name or Surname			
WILLIAM				CORLEY			
Inventor's Signature						Date	11/29/01
Residence: City	Foxborough	State	MA	Country	USA	Citizenship	US
Post Office Address	12 Milton Lane						
City	Foxborough	State	MA	Zip	01035	Country	USA

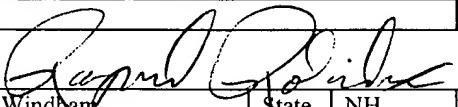
Inventor No. 3

Given Name (First and Middle [if any])				Family Name or Surname			
DAVID				UNGER			
Inventor's Signature						Date	11/19/01
Residence: City	Windham	State	NH	Country	USA	Citizenship	US
Post Office Address	9 Farrwood Road						
City	Windham	State	NH	Zip	03087	Country	USA

Inventor No. 4

Given Name (First and Middle [if any])				Family Name or Surname			
DAVID				DAVIES			
Inventor's Signature						Date	11/19/01
Residence: City	Chelmsford	State	MA	Country	USA	Citizenship	US
Post Office Address	35 Ruthellen Road						
City	Chelmsford	State	MA	Zip	01824	Country	USA

Inventor No. 5							
Given Name (First and Middle [if any])				Family Name or Surname			
PAUL				DORMITZER			
Inventor's Signature						Date	
						11/19/01	
Residence: City	Acton	State	MA	Country	USA	Citizenship	US
Post Office Address	78 Nagog Hill Road						
City	Acton	State	MA	Zip	01720	Country	USA

Inventor No. 6							
Given Name (First and Middle [if any])				Family Name or Surname			
RAYMOND				ROBIDOUX			
Inventor's Signature						Date	
						11/14/01	
Residence: City	Windham	State	NH	Country	USA	Citizenship	US
Post Office Address	18 Washington Road						
City	Windham	State	NH	Zip	03087	Country	USA

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) it establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) it refutes, or is inconsistent with, a position the applicant takes in:
 - (i) opposing an argument of unpatentability relied on by the Office, or
 - (ii) asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

(e) In any continuation-in-part application, the duty under this section includes the duty to disclose to the Office all information known to the person to be material to patentability, as defined in paragraph (b) of this section, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.